

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

RCRev..No. 331 of 2007()

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RCA.62/2006 of ADDL. DISTRICT COURT-II, KOZHIKODE
RCP.14/2004 of ADDL.MUNSIFF COURT,KOZHIKODE-II
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APPELLANTS/RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
DISTRICT COLLECTOR, KOZHIKODE.**

2. ASSISTANT EXCISE COMMISSIONER

3. EXCISE INSPECTOR, KUNNAMANGALAM.

BY GOVERNMENT PLEADER SRI.LAKSHMINARAYAN

RESPONDENTS: RESPONDENT/PETITIONER:

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ABDUL RAZAK, S/O.KALLUTHODKAYIL HAMZA,
KANAYANGOTTU,KUNNAMANGALAM AMSOM DESOM,
KOZHIKODE TALUK DISTRICT.**

BY

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION
ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

K.BALAKRISHNAN NAIR &

K.P.BALACHANDRAN, JJ.

R.C.R. NO. 331 OF 2007

Dated 12th November, 2007.

ORDER

Balakrishnan Nair, J.

The tenants are the revision petitioners. The respondent is the landlord. The Rent Control Petition was filed under Sections 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as “the Act”). The Rent Controller as well as the Appellate Authority concurrently upheld the claim under Section 11(3). Hence this revision.

2. The brief facts of the case are the following: The petition schedule building was taken on rent by the 2nd petitioner from the previous owner. The respondent purchased the building. The tenants attorned to the present owner. The wife of the respondent is a practising doctor. They are residing in the ancestral home of the landlord. It is accommodating the respondent's father, mother, sisters, brothers, wives of brothers and their children. So, the landlord and his wife want to shift their residence. The respondent's wife being a practising doctor, when her patients visit her, she finds it

difficult to examine them in the ancestral home. The presence of the patients is a nuisance to the inmates of the said building. So, they bona fide require the petition schedule building. The petitioners herein resisted the petition, contending that the bona fide claim set up is only a convenient ruse to evict them and to make re-sale of the property. The respondent and his father have several buildings in Kunnamangalam and Kozhikode. Therefore, the bona fide requirement urged is unsustainable in law, it was contended.

3. The Rent Controller raised the necessary points. From the side of the landlord, PW1 was examined and Exts.A1 to A5 were marked. From the side of the tenants, RW1 was examined. Ext.C1 Commissioner's report and Ext.C2 Commissioner's Plan were also marked as court exhibits. As mentioned earlier, both the authorities concurrently upheld the claim of the landlord under Section 11(3) of the Act. The said finding is attacked by the learned Government Pleader on behalf of the petitioners, contending that the bona fide need urged is only a ruse to evict the petitioners. Secondly, it was contended that the non-examination of the landlord's wife is fatal to the petition. The learned Government Pleader further submitted that the petitioners' claim for the benefit of the first proviso to Section 11(3) was not properly considered by the authorities below.

4. We notice that while in the box PW1 has pointed out the

inconvenience faced by him and his wife, who is a doctor, in the ancestral home. They want to shift their residence, so that his wife's practice will not be a nuisance to the inmates of the ancestral home. Further, there are no facilities for examination of the patients, who visit her, at the said residential building. In view of the above position, PW1 deposed that he requires the petition schedule building for shifting his residence. In the cross-examination the above evidence tendered by the landlord respondent remains unshattered. Relying on the said evidence both the authorities found in favour of the landlord under Section 11(3). The said finding is a finding of fact, which cannot be disturbed in a revision under Section 20 of the Act. We fully agree with the reasonings and conclusions of the Appellate Authority. Since the need projected is the need of the landlord, the non-examination of his wife is of no consequence.

5. The next point urged by the learned Government Pleader is regarding the rejection of the claim under the first proviso to Section 11(3). According to him, the respondent and his father own several buildings in the same locality. But, while in the box RW1 deposed that he does not know whether the landlord has got any vacant building in his ownership and possession. The said statement of RW1 has been relied on by the authorities below to find that the petitioners are not entitled to get the benefit of the

first proviso to Section 11(3). Unless the initial burden is discharged by the tenant that the landlord is in possession of other buildings, the landlord need not show special reasons for requiring the petition schedule building. In view of the aforementioned admission of the tenants, their claim for protection under the first proviso to Section 11(3) of the Act is only to be rejected. We do so. No other point has been urged.

6. The learned Government Pleader prayed for some time to vacate the premises. Having regard to the facts of the case, six months' time is granted, provided the petitioners herein file an unconditional undertaking before the Rent Controller/Executing Court, as the case may be, undertaking to vacate the premises within six months from today. The undertaking shall be filed within three weeks from today. Till the building is vacated, the rent due from time to time shall be paid.

Subject to the above direction, the Rent Control Revision is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/